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The "Conservative" Supreme Court

Damon W. Root | July 27, 2010

Earlier this week, *New York Times* Supreme Court correspondent Adam Liptak had a long piece arguing that under the leadership of Chief Justice John Roberts, today's Court had become "the most conservative one in living memory." Cato Institute legal scholar Ilya Shapiro says Liptak's analysis is both simplistic and wrong:

First, the claim that "all" (or even most) judicial decisions can be assigned an ideological value is simply laughable. Are all decisions favoring criminal defendants, unions, and people claiming discrimination or civil rights violations "liberal" while those favoring prosecutors, employers, and the government "conservative" (as the scholars who maintain the database maintain)? What about union members suing unions or large corporations suing each other? What if the criminal defendant is a Fortune 500 CEO (like Conrad Black and Jeffrey Skilling in this past term's "honest services fraud" cases)? What about "reverse" racial discrimination claims like those at issue in *Ricci v. DeStefano* (the New Haven firefighters case)? What about an oil company suing the EPA? A financial services company suing the SEC (or vice-versa)?...

While we're at it, look at the First Amendment. How do you account for the leading pro-free speech justices the last 20 years being Kennedy, Thomas, and Souter? Is a vote allowing a statute that criminalizes certain kinds of disfavored speech "liberal" or "conservative"? (If you have a ready answer, contrast what you think about hate speech laws with what you think about anti-pornography laws.)

Read the whole thing here.